

accommodation available to a consumer. Several examples from the ADA context support the proposition that accessibility should be assessed with a global view.

For example, regulations implementing the ADA do not require hotels to make every hotel room accessible to the disabled, such as individuals with wheelchairs. Instead, the ADA requires hotels to make some rooms of each type (suites, regular rooms, etc.) accessible "in order to provide persons with disabilities a range of options equivalent to those available to other persons. . . Factors to be considered include room size, cost, amenities provided, and the number of beds provided." ADA Guidelines for Buildings and Facilities, 28 C.F.R. part 36, App. A at 63.

Similarly, the guidelines adopted by the Access Board to implement the ADA do not require theaters to make every seat accessible to persons in wheelchairs. Instead, the Access Board adopted a guideline requiring theaters and other assembly areas to provide wheelchair seating "so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public," including the option to sit beside the companion of one's choice. ADA Guidelines for Buildings and Facilities, 28 C.F.R. part 36, App. A at 56.

Therefore, the ADA, which is the source of the readily achievable standard, 42 U.S.C, § 12181(9), does not support an interpretation that would require each and every piece of telecommunications equipment to be accessible to the disabled. Rather, the Access Boards' own guidelines implementing the public accommodations provisions of the ADA support an interpretation of the readily achievable standard to incorporate a more global view of accessibility. As the readily achievable standard has been implemented by the Access Board in the ADA context, it simply requires that to the extent readily achievable, disabled individuals should have a similar general range of choices -- including factors such as quality and price -- as does the general public.

The readily achievable standard should be applied with a similarly global view in the telecommunications equipment context, judging a manufacturer's compliance with Section 255 based upon the range of accessible products provided for various disabilities, not based upon a model-by-model assessment.

V. THE DEFINITION OF "DISABILITY," INCORPORATED BY REFERENCE FROM THE AMERICANS WITH DISABILITIES ACT ("ADA") SHOULD BE LIMITED TO INCLUDE ONLY THOSE PERSONS WITH AN ACTIVE, CURRENT DISABILITY^{10/}

The ADA definition of "disability" incorporated into the Telecom Act should be narrowed to include only those persons with an active, current disability that affects their ability to use and to access telecommunications equipment. The ADA defines the term "disability" to include those individuals with "a physical or mental impairment that substantially limits one or more . . . major life activities"; persons with "a record of such an impairment"; and "being regarded as having such an impairment." 42 U.S.C. § 12102(a)(2).

A. The Relevant "Major Life Activity" for the Purposes of Section 255 Is the Ability to Utilize Telecommunications Equipment

Unlike the ADA, which applies in a broad range of contexts, including employment and access to public accommodations, the disability access provisions of the Telecom Act apply to a very narrow range of activities by equipment manufacturers: the manufacture, production, and design of telecommunications equipment. 47 U.S.C. § 255(a)(1). The Telecom Act focuses upon a specific "major life activity," the use of telecommunications equipment.

^{10/} Response to NOI ¶¶ 13-14.

Certainly, many disabilities, such as sight and hearing impairments, can "substantially limit" an individual's ability to access telecommunications equipment. Cf. 42 U.S.C. § 12102(a). Under the Telecom Act, manufacturers, including Motorola, must provide equipment, to the extent readily achievable, that is accessible to individuals whose disabilities "substantially limit" them in this way.

Other disabilities, however, may or may not limit an individual's ability to access telecommunications equipment. Logically, disabilities that have no impact on a person's ability to access telecommunications equipment should not be covered by Section 255. Any other result would only lead to an uncertain and unfair application of the law. Accordingly, the Commission should make clear that Section 255 applies only to those persons whose disabilities "substantially limit" their ability to access telecommunications equipment. Cf. 42 U.S.C. § 12102(a).

B. The Definition of "Disability" Applied in the Telecommunications Context Should Include Only Those Persons With An Active, Current Disability

Similarly, the definition of "disability" for purposes of implementing the Telecom Act should not extend to include individuals with a record of a disability or who are perceived as having a disability. The ADA includes these categories of

individuals within the scope of its protection because the perception or history of a disability that does not currently exist may subject a person to unlawful discrimination, for example, in the employment context. Unless an individual has an active, current disability that "substantially limits" his or her ability to access telecommunications equipment, however, there is nothing that a manufacturer can do in the design, development or fabrication of telecommunications equipment to improve its accessibility to that individual. Consequently, the Commission should clarify the ADA definition of "disability" as not applying to those persons with a record or perception of disability.

CONCLUSION


For the reasons stated above, the Commission should: first, not adopt the guidelines promulgated by the Access Board without exercising substantive review of the guidelines; second, equitably apply the requirements of Section 255 to different types of equipment manufacturers: large and small, foreign and domestic; third, apply the readily achievable standard with a long-term goal of promoting, rather than constraining, technological innovation; fourth, implement the Telecom Act so as to allow for the overall accessibility of telecommunications equipment to persons with all types of disabilities, not to

require the accessibility of each piece of telecommunications equipment for people with each particular disability; and fifth, should narrow the ADA definition of "disability" incorporated into the Telecom Act to include only those persons with an active, current disability that affects their ability to use and to access telecommunications equipment.

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CERTIFICATE OF SERVICE

I, Steven K. Davidson, do hereby certify that on this 28th day of October 1996, a copy of the foregoing Comments of Motorola, Inc. has been served, via hand delivery, upon the following:

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